IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

(1) S.B. CIVIL WRIT PETITION NO. 4454/2002
BRIJESH KUMAR SHARMA & ANR. Vs. STATE OF RAJ. & ORS.

(2) S.B. CIVIL WRIT PETITION NO. 3615/2002
GOPAL LAL RAWAT Vs. STATE OF RAJASTHAN

(3) S.B. CIVIL WRIT PETITION NO. 6530/2002
HEERA LAL SAINI Vs. STATE OF RAJ. & ORS.

(4) S.B. CIVIL WRIT PETITION NO. 6810/2002
HEERA LAL SAINI & ORS Vs. STATE OF RAJ. & ORS.

(5)S.B. CIVIL WRIT PETITION NO. 8464/2002
KAILASH CHAND MISHRA Vs. STATE OF RAJ. & ORS.

(6) S.B. CIVIL WRIT PETITION NO. 4425/2002
RAKESH SHARMA Vs. STATE OF RAJ. & ORS.

(7)S.B. CIVIL WRIT PETITION NO. 3285/2002
MADHO BIHARI LAL GUPTA Vs. STATE OF RAJ. & ANR.

(8) S.B. CIVIL WRIT PETITION NO. 9079/2002
LAXMAN SINGH & ORS. Vs. STATE OF RAJ. & ORS.

(9) S.B. CIVIL WRIT PETITION NO. 8774/2002
MAHESH SHARMA Vs. STATE OF RAJ. & ANR.

(10) S.B. CIVIL WRIT PETITION NO. 8882/2002
KALURAM MEENA Vs. STATE OF RAJ. & ORS.

(11) S.B. CIVIL WRIT PETITION NO. 8959/2002
ARUN BHATNAGAR Vs. STATE OF RAJ. & ORS.

(12) S.B. CIVIL WRIT PETITION NO. 3971/2002
KEDAR PRASAD & ORS. Vs. STATE OF RAJ. & ORS.

(13) S.B. CIVIL WRIT PETITION NO. 4533/2002
GOPAL LAL SHARMA Vs. STATE OF RAJ. & ORS.

(14) S.B. CIVIL WRIT PETITION NO. 5571/2002
GOVIND SHARMA & ORS. Vs. STATE OF RAJ. & ANR.

(15) S.B. CIVIL WRIT PETITION NO. 3576/2002
RAM KUMAR AGRAWAL Vs. STATE OF RAJ. & ORS.

(16) S.B. CIVIL WRIT PETITION NO. 9543/2002
NAWAL KISHORE SHARMA & ORS. Vs. STATE OF RAJ. & ANR.

(17) S.B. CIVIL WRIT PETITION NO. 3057/2002
KAILASH CHANDRA MISHRA Vs. STATE OF RAJ. & ORS.

(18) S.B. CIVIL WRIT PETITION NO. 4167/2002
SHIV RAM SHARMA Vs. STATE OF RAJ. & ORS.

(19) S.B. CIVIL WRIT PETITION NO. 1276/2003
NARESH KUMAR Vs. STATE OF RAJ. & ORS.

(20) S.B. CIVIL WRIT PETITION NO. 4043/2002
GOVIND SHARMA & ORS. Vs. STATE OF RAJ. & ANR.

(21) S.B. CIVIL WRIT PETITION NO. 4248/2002
DINESH CHAND JAIN Vs. STATE OF RAJ. & ORS.

(22) S.B. CIVIL WRIT PETITION NO. 3925/2002
BAIJNATH GRIH NIRMAN SAHAKARI SAMITI LTD.
Vs.
STATE OF RAJASTHAN & ORS.

(23) S.B. CIVIL WRIT PETITION NO. 5646/2002
SAGAR MAL BHATRA & ANR. Vs. STATE OF RAJ. & ORS.

(24) S.B. CIVIL WRIT PETITION NO. 5647/2002
SAGAR MAL BHATRA & ANR. Vs. STATE OF RAJ. & ORS.
&
(25) S.B. CIVIL WRIT PETITION NO. 5648/2002
SAGAR MAL BHATRA & ANR. Vs. STATE OF RAJ. & ORS.

DATE:03/09/2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Ms. Gayatri Rathore)
Mr. Suresh Sahni)
Mr. Paker Farooq,)
Mr. R.P. Garg,)
Mr. Vipul Jaiman,)
Mr. R.B. Mathur,)
Mr. H.C. Ganeshia,)
Mr. S.C. Gupta)
Mr. Ashvin Garg and)
Mr. Ashish Sharma) for the petitioners.

Mr. B.S. Chhaba, Addl. GA for the State.

Mr. A.K. Gupta,)
Mr. Rinesh Gupta and)
Mr. Mahendra Goyal) for the respondents.

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Since all these writ petitions pertain to quashment of FIR and are involving similar questions of law, therefore, they are being decided by this common order.

2. In all these writ petitions the main challenge is to the FIRs on the various grounds and is mainly challenged on the ground that the dispute involved in these writ petitions is of civil nature. The FIRs' are further challenged on the ground that subject matter of the FIRs is not related to the petitioners and the petitioners are not at all concerned and the FIRs have wrongly been lodged against them.

3. In some of the writ petitions the FIRs are also challenged on the ground that if first FIR is lodged relating to same offence and the final report is submitted by the police after investigation, then second FIR for the same offences is not maintainable. It is also contended that on account of submitting final report, the concerned Court cannot direct for

reinvestigation and if final report is not accepted by the concerned Court and the Court directed for fresh investigation, in such eventuality also, the said FIR required to be quashed and set-aside.

4. In most of the writ petitions, the petitioners tried to make out case on factual aspects that the petitioners in any manner are not responsible to any criminal act and are also not related to offence alleged to be committed for which the FIRs' have been lodged.

5. In few of the writ petitions, the petitioners main contention is that their name do not find place in the FIR, therefore, only on this count alone the FIRs' are required to be quashed and set-aside.

6. Heard learned counsel appearing for the respective parties as well as learned Govt. Advocate appearing for the State and have also examined the individual writ petition on its own merit.

7. Learned counsels for the petitioners as well as the learned counsels appearing for the respondents have strongly placed reliance on the judgment rendered

by the Hon'ble Supreme Court in the case of **State of Haryana And Others Vs. Bhajan Lal And Others, 1992 Supp (1) SCC 335,** wherein the Hon'ble Supreme Court has observed the following principles:-

> “The order of the High Court quashing the first information report, viewed from any angle. Cannot be sustained both on the question of law and facts. Consequently, that part of the judgment of the High Court quashing the first information report is set aside.
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> “The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 Cr.P.C. Can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to given an exhaustive list of myriad kinds of cases wherein such power should be exercised:
>
> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any,

accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

8. Learned counsels appearing for the respective petitioners and the respondents referred 7 guidelines laid down by the Hon'ble Supreme Court in the aforementioned case of **Bhajan Lal (supra)** and to test the category of the individual case whether individual writ petition falls within the ambit of the test laid down by the Hon'ble Supreme Court or not, and if it falls under the 7 categories as mentioned by the Hon'ble Supreme Court in the aforementioned case of **Bhajan Lal (supra)**, then only the FIR can be quashed and set aside.

9. Similarly while laying down the 7 categories, the Hon'ble Supreme Court has further observed that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim

or caprice. The court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint.

10. Reliance has also been placed on the judgment rendered by the Hon'ble Supreme Court in the case of **State of Kerala and others Vs. O.C. Kuttan and others, AIR 1999 SC 1044,** wherein the Hon'ble Supreme Court has observed as under:-

> "6. At the outset there cannot be any dispute with the proposition that when allegations in the FIR do not disclose prima facie commission of a cognizable offence, then the High Court woold be justified in interfering with the investigation and quashing the same as has been held by this Court in Sanchaita Investment's case, (1982) 1 SCC 561 : (AIR 1982 SC 949). In the case of State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : (1992 AIR SCW 237), this Court considered the question as to when the High Court can quash a criminal proceeding in exercise of its powers under Section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution of India and had indicated some instances by way of illustrations, though on facts it was held that the High Court was not justified in quashing the first information report. This Court held that such powers could be exercised either to prevent abuse of the process of any Court or otherwise to

secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. But as an illustration several circumstances were enumerated. Having said so, the Court gave a note of caution to the effect that the power of quashing the criminal proceedings should be exercised very sparingly with circumspection and that too in the rarest of rare cases, that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. It is too well settled that the first information report is only an initiation to move the machinery and to investigate into a cognizable offence and, therefore, while exercising the power and deciding whether the investigation itself should be quashed, utmost care should be taken by the Court and at that stage it is not possible for the Court to shift the materials or to weigh the materials and then come to the conclusion one way or the others. In the case of State of U.P. v. O.P. Sharma (1996) 7 SCC 705 : (1996 AIR SCW 1229), a three-Judge Bench of this Court indicated that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 or under Article 226 and 227 of the Constitution of India, as the case

may be and allow the law to take its own course. The same view was reiterated by yet another three-Judges Bench of this Court in the case of Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397, where this Court sounded a word of caution and stated that such power should be sparingly and cautiously exercised only when the Court is of the opinion that otherwise there will be gross miscarriage of justice. The Court had also observed that social stability and order is required to be regulated by proceeding against the offender as it is an offence against the society as a whole. Bearing in mind the parameters laid down in the aforesaid judgments and on a thorough scrutiny of the statement of Seena dated 23rd of July, 1986, which was treated as an F.I.R. and on the basis of which criminal case was registered and her subsequent statements dated 24-8-96 and 25-8-96, we have no hesitation to come to the conclusion that the High Court committed gross error in embarking upon an enquiry by shifting of evidence and coming to a conclusion with regard to the age of the lady on the date of alleged sexual intercourse, she had with the accused persons and also in recording a finding that no offence of rape can be said to have been committed on the allegations made as she was never forced to have sex but on the other hand she willingly had sex with those who paid money. We do not think it appropriate to express any opinion on the materials on record as that would embarrass the investigation as well as the accused persons, but suffice it to say that this cannot be held to a case where the Court should have scuttled investigation by quashing the F.I.R., particularly when the

> criminal case had been registered under several provisions of the Penal Code as well as under Immoral Traffic Act. We also do not approve of the uncharitable comments made by the High Court in paragraph (12) of the Judgment against the woman who had given the F.I.R. It is not possible and it was not necessary to make any comment on the character of the lady at this stage. We also have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction to record a finding that the lady exercised her discretion to have sex with those whom she liked or got money and she willingly submitted herself to most of them, who came to her for sex. We refrain from making any further observations in the case as that may affect the investigation or the accused persons but we have no hesitation to come to the conclusion after going through the statements of the victim lady that the High Court certainly exceeded its jurisdiction in quashing the F.I.R. and the investigations to be made pursuant to the same so far as respondents are concerned. We, accordingly set aside the impugned order of the High Court and direct the investigating Agency to proceed with the investigation and conclude the same as expeditiously as possible in accordance with law. These appeals are accordingly allowed."

11. Further in the case of **State of Karnataka Vs. Pastor P. Raju, AIR 2006 SC 2825,** the Hon'ble Supreme Court has considered the case of Bhajan Lal and other cases as well the observations made in the case of

State of Bihar & Anr. Vs. JAC Saldanha & Ors., (1980)1 SCC 554, wherein it was observed in para 20 as under:-

> "20. Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer in charge of police station in Court under Section 173(2) Cr.P.C., this field being exclusively reserved for the investigating agency."

12. I have carefully gone through the facts and circumstances of each writ petition individually on merits to judge whether the writ petitions fall under any of the categories as observed by the Hon'ble Supreme Court in the case of **Bhajan Lal (supra)** and any case for interference in the matter while exercising extraordinary power under Article 226 of the Constitution of India is made out or not? I have also gone through the judgment rendered by the Hon'ble Supreme Court in the case of **T.T. Antony Vs. State of Kerala & Ors., JT 2001(5) SC 440.**

13. All the petitioners failed to make out any case that FIR in question is false at its face value and by bare perusal of the FIR, it cannot be said that the FIR is false at its face value.

14. Further the petitioners also not able to show that no prima-facie case is made out against them. In all the writ petitions during investigation it was observed that prima-facie case is made out against the petitioners and investigation is yet to be completed and the petitioners have every right to produce evidence in support of their submissions to disclose that commission of any offence is not made out against the petitioners.

15. In all the writ petitions, there is no malafide allegations against the complainant that the FIR has been lodged malafidely and mere assertion of malafide allegations does not survive and in support of the averments that the FIR has been malafidely lodged, no material has been placed before this Court to show that the FIR in question has been malafidely lodged against the petitioners.

16. Thus, the petitioners are not able to make out any case in their favour. Having gone through the contents of the FIRs, it cannot be said that the FIRs are false at their face value. The petitioners are having every right to adduce evidence and documents in support of their submissions before the investigating

agency, but in any case, though this Court has extraordinary power under Article 226 of the Constitution of India, but such power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases, as held by the Hon'ble Supreme Court in the aforementioned case of **Bhajan Lal (supra).**

17. All these writ petitions are filed by the petitioners for quashing the FIRs but it cannot said to be rarest of rare cases. As per the ratio laid down by the Hon'ble Supreme Court in the case of **Bhajan Lal (supra),** none of the writ petitions falls under any of the categories, which requires any interference by this Court while exercising extraordinary jurisdiction under Article 226 of the Constitution of India.

18. In view of the observations made herein above, all the writ petitions fail and the same are hereby dismissed.

19. The interim orders granted by this Court in S.B.C.W. Petition No. 4454/2002 dated 25.07.2002, S.B.C.W. Petition No. 3615/2002 dated 22.07.2002, S.B.C.W. Petition No. 6530/2002 dated 24.09.2002,

S.B.C.W. Petition No. 8464/2002 dated 25.11.2002, S.B.C.W. Petition No.3576/2002 dated 12.07.2002, S.B.C.W. Petition No. 4425/2002 dated 25.07.2002, S.B.C.W. Petition No. 3285/2002 dated 24.05.2002, S.B.C.W. Petition No. 9079/2002 dated 12.12.2002, S.B.C.W. Petition No. 8774/2002 dated 09.12.2002, S.B.C.W. Petition No. 8959/2002 dated 05.12.2002, S.B.C.W. Petition No. 3971/2002 dated 09.07.2002, S.B.C.W. Petition No. 4533/2002 dated 26.07.2002, S.B.C.W. Petition No. 5571/2002 dated 21.08.2002, S.B.C.W. Petition No. 9543/2002 dated 19.12.2002, S.B.C.W. Petition No. 3057/2002 dated 15.05.2002, S.B.C.W. Petition No. 4167/2002 dated 16.07.2002, S.B.C.W. Petition No. 4043/2002 dated 11.07.2002, S.B.C.W. Petition No. 4248/2002 dated 18.07.2002, S.B.C.W. Petition No. 3925/2002 dated 10.07.2002, S.B.C.W. Petition No. 5646/2002 dated 28.08.2002, S.B.C.W. Petition No. 5647/2002 dated 28.08.2002 and S.B.C.W. Petition No. 5648/2002 dated 28.08.2002 stand rejected. The stay applications also stand rejected.

(K.S. RATHORE),J.

/KKC/